

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

MARK MANCUSO, on behalf of himself
and others similarly situated

Plaintiff,

v.

RFA BRANDS, LLC, d/b/a MYCHARGE,

Defendant.

Case No. 6:18-cv-06807-DGL

PLAINTIFF’S MOTION FOR LEAVE TO FILE A SUR-REPLY

Plaintiff Mark Mancuso, by and through his attorneys, respectfully requests that Your Honor grant Plaintiff leave to file the attached brief sur-reply in response to Defendant RFA Brands LLC’s Reply in Support of its Motion to Dismiss the Complaint (ECF No. 15) (the “Reply”). In its Reply, Defendant argues for the first time that Plaintiff tested the wrong battery, extrapolating from a typographical error on one page of Plaintiff’s Memorandum in Response to Defendant RFA Brands, LLC’s Motion to Dismiss. Additionally, Defendant makes new contentions concerning the privity requirement for express warranty.

Plaintiff therefore respectfully requests that this Court grant Plaintiff leave to file the attached sur-reply.

Dated: February 21, 2019

Respectfully Submitted,

s/ D. Greg Blankinship

D. Greg Blankinship

Todd S. Garber

**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**

445 Hamilton Avenue, Suite 605

White Plains, New York 10601

Tel: (914) 298-3281

Fax: (914) 824-1561

gblankinship@fbfglaw.com

tgarber@fbfglaw.com

Attorneys for Plaintiff and Putative Class